

Response to Office Action dated April 23, 2004
Amendment dated August 18, 2004
File No. 1239.01

Remarks/Arguments

Reconsideration is hereby requested, as is a one month extension of time, within which to respond to the non-final Official Action. The Small Entity extension of time fee for one month is in amount of \$55.00 to be charged to Deposit Account No. 502557.

The Examiner has taken official notice that the angle of a vehicle's dash panel varies from model to model, and therefore to one of ordinary skill in the art it would be obvious that the installation of Chen's unit on a vehicle having a dash-panel with an angle different than 90 degrees would provide a recess having a primary axis positioned at a diagonal relative to a horizontal plane defined by a floor of a vehicle, wherein the mouth and distal base of the recess are transverse to the inner lateral surfaces and primary axis of the recess.

Under Section 2144.03 of the Manual of Patent Examining Procedure, "Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances." The MPEP goes on to further states that "while "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or a action under 37 CFR 1.113." Herein, the rejection is final.

In a typical situation, it is found necessary to take notice of facts which may be used to supplement or clarify the teaching of a reference or disclosure, to justify or explain a particular inference to be drawn from a reference. The facts so noticed serve to "fill in the gaps" which might exist in the evidentiary showing

Response to Office Action dated April 23, 2004
Amendment dated August 18, 2004
File No. 1239.01

made by the Examiner to support a particular ground for rejection. *In re Alhert*, 424 F.2d 1088, 1092 (CCPA 1970). *Alhert* follows *In re Knapp-Monarch Company* in that judicial notice permits proof by evidence to be dispensed with where common knowledge supports the truth of a proposition. 296 F.2d 230 (CCPA 1961). Judicial notice may also be taken of facts "though they are neither actually notorious nor bound to be judicially known, yet they would be capable of such instant and unquestionable demonstration, if desired, that no party would think of imposing a falsity on the tribunal in the face of an intelligent adversary. Id. However, in this matter the subject of the Examiner's official notice does not clarify any reference. Rather, it is the reference.

Deficiencies of cited references cannot be remedied by the Examiner's general conclusions about what is "basic knowledge" or "common sense." *In re Zurko*, 258 F.3d at 1379,1385 (CCPA 2001). The Examiner here makes an assumption that dash board panels vary from model to model, but does not explicitly demonstrate how or where this occurs. The dash board panels could very well be similar in size, structure, dimensions, and angulation in most vehicles. Further, a user would need to purchase his vehicle solely on the basis of angulation of the dashboard, to practice the invention as viewed by the Examiner.

Even when the level of skill in the art is high, an Examiner must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination of references. *In re Rouffet*, 149 F.3d 1350, 1359 (Fed. Cir. 1998). In other words, the Examiner must explain the reasons one of ordinary skill in the

Response to Office Action dated April 23, 2004
Amendment dated August 18, 2004
File No. 1239.01

art would have been motivated to select the references and to combine them to render the claimed invention obvious. Id. Also, the Examiner can satisfy this burden of showing obviousness of the combination "only by showing some objective teaching in the prior art, or in knowledge generally available to one of ordinary skill in the art, would lead that individual to combine the relevant teachings of the references. *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992). The references cited by the Examiner contain no teaching of combination, particularly Sato which apparently teaches nothing other than the fact that his system can plug into a cigarette lighter of a car battery which would require that the radio of Sato be placed on the floor or seat of the car. (See Column 1, Lines 10-11)

The limitation of Claim 16 has therefore been inserted into independent claim 14. Claim 16 is therefore deleted and Claim 20 has been made dependant upon Claim 14 as amended.

In view of the above, applicant urges that Sato and the subject of the official notice are not proper references, and as such Claims 14 as amended, 15, 17-19, 20 as amended, and 21-22 should now be allowed.

Respectfully submitted,
Oscar H. Campos

8.20.04
Date of Signature


By: Melvin K. Silverman
Registration No. 26,234